

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	
)	NOTICE OF INTENT TO REVOKE
Omar Rasmi Shalabi (CRD #2777244),)	AGENT AND INVESTMENT ADVISER
)	REPRESENTATIVE REGISTRATIONS
)	
<u> Respondent.</u>)	File Numbers 09004 and 10060

The Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), under the authority of the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2010), upon due consideration of the subject matter herein and having reason to believe that Omar Rasmi Shalabi ("Shalabi" or "Respondent") should not be permitted to represent a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities and also should not be permitted to engage in the business of advising others as to the value of securities or the advisability of investing in, purchasing or selling securities, does hereby notify Respondent that the Division intends to seek the issuance of an order, pursuant to S.C. Code Ann. § 35-1-412, revoking Respondent's registrations as an agent and an investment adviser representative. The Division hereby includes in this Notice of Intent to Revoke Agent and Investment Adviser Representative Registrations ("Notice of Intent") a statement of the reasons for the order that is sought, a statement of the penalty sought, and notice that a hearing will be scheduled if Respondent requests a hearing.

INTRODUCTION

1. This matter involves Respondent's offer and sale of unsuitable products, willful failure to follow firm policy, and engaging in dishonest or unethical practices in the securities and investment business.
2. Such actions by Respondent violate the Act and, pursuant to S.C. Code Ann. §§ 35-1-412 and 35-1-604, form the basis for suspension of Respondent's agent and investment adviser registrations with the State of South Carolina, issuance of a cease and desist order and a permanent bar, issuance of an administrative fine, and other sanctions as appropriate.

JURISDICTION

3. The Securities Commissioner of the State of South Carolina ("Commissioner") has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

RESPONDENT

4. Respondent, at all times material herein, was a resident of Richland County, South Carolina.
5. Respondent's last known home address is 704 Longtown Road West, Blythewood, South Carolina 29016.
6. Respondent, at all times material herein, was registered with the Division as a broker-dealer agent and as an investment adviser representative.

FACTUAL STATEMENT

Investor A

7. In or around April, 2004, Investor A, a recent retiree, met with Shalabi in his office at a local bank branch to discuss possible investments for her retirement assets.

8. At the time of the meeting, the only investment experience Investor A had was in choosing mutual funds for her 401K from a list of funds provided by her employer. Investor A had no experience selecting or investing in individual stocks or bonds, other than United States savings bonds, and no experience with or knowledge of real estate investment trusts (“REITS”) or the risks associated with investing in REITS.
9. Investor A indicated to Shalabi that she was a conservative investor and did not want to take risks with her hard-earned retirement money.
10. Shalabi recommended Investor A use her retirement funds to purchase shares of a Behringer Harvard real estate investment trust (the “BH REIT”).
11. Shalabi assured Investor A that the BH REIT accomplished her desire to be invested in something that would protect her principal.
12. As part of his sales pitch, Shalabi indicated to Investor A that his father was invested in the same security and that “I will treat you like family.”
13. Shalabi assured Investor A that the BH REIT would add to her retirement.
14. Shalabi assured Investor A that the company sponsoring the BH REIT was a strong company.
15. In response to Investor A’s concern about the safety of this investment, Shalabi told Investor A, the investment was “as good as it gets.”
16. Shalabi indicated that in order to qualify for the BH REIT investment, Investor A needed a certain net worth.
17. Shalabi indicated to Investor A that he would “take care of” the net worth requirements for investment in the BH REIT.

18. Based on Shalabi's advice concerning the investment, Investor A agreed to purchase the BH REIT.
19. On April 26, 2004, Shalabi had Investor A sign a "Direct Account Form (Non-Brokerage Accounts)" on which the section titled "Tell us about yourself" was blank.
20. On or around April 26, 2004, Shalabi purchased a \$102,769.95 investment in the BH REIT for Investor A's account.
21. In completing paperwork prior to Investor A's investment in the BH REIT, Shalabi did not accurately record financial information that was necessary to (1) ensure Investor A met the net worth requirements for investing in the BH REIT; (2) follow firm requirements for completing new account paperwork; and (3) ensure the BH REIT was a suitable product for Investor A given her age, income, experience, risk tolerance, and stated desires.
22. In connection with the offer and sale of the BH REIT to Investor A, Shalabi did not disclose material information concerning the BH REIT and/or its advisors, the shares, and the debt of the BH REIT to Investor A.
23. Shalabi did not disclose to Investor A that the BH REIT had begun operation just six (6) months prior to her investment.
24. Shalabi did not disclose to Investor A that there was no public market for the shares of the BH REIT.
25. Shalabi did not disclose to Investor A that the level of debt held by the BH REIT could hinder its ability to pay dividends to stockholders.
26. Shalabi did not disclose to Investor A the BH REIT held only a 14.4676% tenant in common interest in Minnesota Center, a fourteen story office building in Bloomington, Minnesota.

27. Shalabi did not disclose to Investor A that the advisor to the BH REIT had no prior experience sponsoring a public real estate investment trust.
28. Shalabi did not disclose to Investor A that (a) a 4% fee would be paid to the Property Manager, (b) a \$4.00 per square foot fee would be paid as a “Leasing Commission,” (c) there was a 5% Construction Management Fee associated with the project or (d) there was also a 1% Financing Fee associated with the project.
29. Shalabi did not disclose to Investor A that her investment could become worthless.
30. Subsequent to her investment in the BH REIT, Investor A returned to work part-time.
31. At the age of 66, Investor A subsequently retired from the part-time position.
32. At the time of her second retirement, in or around May, 2009, Investor A again consulted Shalabi, this time regarding recommendations for investing the \$26,988.00 she had accumulated in a second retirement account.
33. While meeting with Shalabi in or around May, 2009, Investor A again cautioned Shalabi that she had worked many years for her retirement money and wanted to invest it in something safe.
34. Following Investor A and Shalabi’s meeting in or around May, 2009, Shalabi recommended to Investor A another real estate investment trust (“REIT”), a Grubb & Ellis Healthcare REIT (the “G&E REIT”).
35. Following Shalabi’s recommendation of the second G&E REIT, Investor A questioned whether it was a good idea to have her retirement money so heavily invested in real estate.
36. Shalabi responded to Investor A that the healthcare REIT was “the wave of the future in light of healthcare reform.”

37. Based on Shalabi's representations, Investor A agreed to purchase a second REIT, the G&E REIT, with her retirement funds.
38. On or around May 12, 2009, Shalabi purchased a \$26,988.82 investment in the G&E REIT for Investor A's account.
39. In connection with the offer and sale of the G&E REIT to Investor A, Shalabi did not disclose material information concerning the REIT and/or the terms of the offering, the REIT's operating history, and the REIT's cash flow to Investor A.
40. Shalabi did not disclose to Investor A that the issuer had a limited operating history.
41. Shalabi did not disclose to Investor A that the G&E REIT offering materials indicated there may not be sufficient cash available from operations to pay distributions.
42. Shalabi did not disclose to Investor A that the G&E REIT offering materials indicated the issuer may not be able to secure funds for future tenant or other capital improvements which could limit the ability to attract or replace tenants and decrease Investor A's return on her investment.
43. Shalabi did not disclose to Investor A that the company could invest in collateralized mortgage-backed securities.
44. Shalabi did not disclose to Investor A that she would be required to hold her shares for at least four years in order to be eligible for the issuer's repurchase program.
45. Shalabi did not disclose to Investor A that the Board, in its sole discretion, could terminate, amend or suspend the Repurchase Plan if it determined to do so.
46. The G&E REIT was considered a speculative investment.
47. Shalabi did not disclose to Investor A that the G&E REIT could be considered a speculative investment, or that it was not a suitable or appropriate investment for her.

48. Shalabi did not disclose to Investor A that putting a high percentage of her investment assets in REITs was not a wise decision based on her conservative investment objectives.

49. Shalabi did not disclose to Investor A that she could lose some or all of the money she invested in the G&E REIT.

50. On March 31, 2010, Investor A wrote to Shalabi expressing concern that 48% of her retirement money was in REIT's and that all of her retirement money was invested in REIT's and annuities.

51. In her March 31, 2010 letter, Investor A also expressed concern that her investments provided "limited accessibility," meaning they did not provide an income and she could not readily draw out cash from them as she needed it.

52. Following receipt of the letter, Shalabi called and spoke with Investor A. In this conversation, Investor A told Shalabi that she wanted her investments returned to their original value.

53. Shalabi indicated to Investor A that he could not accomplish Investor A's request. In response, Investor A told Shalabi that she wanted to talk to someone who could.

54. During the next two or more months, Investor A did not hear from Shalabi or anyone at the firm Shalabi worked for regarding her letter of complaint.

55. In or about May, 2010, while in the bank branch where she had previously met with Shalabi, Investor A expressed to a bank employee her frustration that she never received a response to her complaint.

56. When asked about Investor A's complaint, Shalabi indicated he had filed Investor A's complaint in her client file.

57. At the time of Shalabi's actions, WEST Financial Services Group, Inc. ("UVEST"), Shalabi's broker-dealer, required that all complaints be forwarded to UVEST's Compliance Department immediately upon receipt.

58. UVEST's procedures concerning the forwarding of complaints are similar to those of brokerage firms throughout the industry.

59. Shalabi knew of UVEST's requirements and wilfully chose to ignore them.

60. Following the branch meeting in May, Investor A received a letter from UVEST dated July 8, 2010, indicating that her complaint was being reviewed.

61. Investor A subsequently received a letter from a UVEST employee relaying information regarding alleged conversations between Investor A and Shalabi.

62. The interactions relayed in that letter did not occur as described.

63. Furthermore, statements in the letter concerning investor preferences, the disclosure of risks, investor time frames, redemption possibilities, and/or information relating to the investments were false.

64. Upon information and belief, the UVEST employee's source for the information relayed in the letter was Shalabi.

Investors B and C

65. In or around July, 2007, as a result of an eminent domain action by, or on behalf of the Kershaw County School District, Investors B and C (the "H's") were to receive proceeds which, if not properly invested, would incur a significant tax liability.

66. During the summer of 2007, the H's approached an employee they knew and trusted at their local bank to request information and assistance in investing the proceeds.

67. The H's were referred to Shalabi.

68. On or about July 12, 2007, the H's met with Shalabi in the Camden branch of the local bank to discuss alternatives for investing the proceeds they anticipated receiving.
69. Shalabi represented to the H's that employing a 1031 exchange would accomplish their goals.
70. Specifically, Shalabi recommended they employ a 1031 exchange to invest in an apartment building in Austin, Texas (hereafter "Iron Rock Ranch").
71. Shalabi represented to the H's that an investment in Iron Rock Ranch would yield them steady income and then result in additional gain when the property was sold to future investors.
72. Shalabi represented to the H's that the Iron Rock Ranch investment was "a sure thing."
73. Shalabi did not disclose to the H's that if they invested in Iron Rock Ranch their money could not be withdrawn for 10 years.
74. Shalabi did not disclose to the H's that to be accepted as investors in Iron Rock Ranch they had to agree to accept liability, risk, and additional debt obligations.
75. Shalabi did not disclose to the H's that monthly income from Iron Rock Ranch was not guaranteed and, even if paid, at some point could be terminated without the H's consent.
76. Shalabi did not disclose to the H's that the property managers presently managing Iron Rock Ranch only had recently acquired management responsibility for the property.
77. Shalabi did not disclose to the H's that previously the Iron Rock Ranch property had not been properly maintained and renovations and repair work were needed before the property could be fully leased.
78. Shalabi did not disclose to the H's that if they invested, they could be called on to invest additional money into the Iron Rock Ranch property.

79. Shalabi did not disclose to the H's that the "financial forecast" presented in the offering document assumed increasing minimum rates of "economic occupancy" but offered no assurance that the contemplated economic occupancy rates could be achieved.

80. Shalabi did not disclose to the H's that no real due diligence had been done on Iron Rock Ranch and that, instead, when he recommended the investment to them, he was relying on marketing materials produced by U.S. Advisors, LLC, the sponsor of the offering.

81. Shalabi indicated to the H's that in order to qualify for the Iron Rock Ranch investment they needed to have a net worth of one million dollars.

82. Upon being told this, Mrs. H told Shalabi the H's did not have a net worth of one million dollars.

83. Shalabi's response was the H's did not need to worry; he would take care of getting them qualified.

84. The H's did not have sufficient net worth to qualify as accredited investors.

85. Shalabi was required to determine whether a potential investor qualified as an accredited investor before selling the Iron Rock Ranch investment to the investor.

86. In the H's case Shalabi intentionally circumvented this requirement by falsely filling out a Direct Account Form to make the H's appear to be accredited investors when they were not.

87. On or around August 21, 2007, Shalabi sold the H's an interest in the Iron Rock Ranch.

88. The H's were not sophisticated investors and did not possess the expertise to read and understand the complex prospectus and trust documents describing the Iron Rock Ranch investment. The H's relied upon Shalabi to investigate and recommend an appropriate investment to them.

89. The Iron Rock Ranch investment was not a suitable investment for the H's based on their risk tolerance and objectives.

90. On or about November 14, 2008, the H's were notified by U.S. Advisor, LLC, the Master Tenant of the Iron Rock Ranch complex, that: (1) all cash reserves were fully exhausted, (2) the Master Tenant lacked sufficient capital to continue to fund the rent payments to the Trust, (3) no more distributions would be made "at this time," and (4) the Master Tenant did not know when or if distributions would begin again in the future.

91. When Shalabi recommended Iron Rock Ranch to the H's as a "sure thing," he failed to disclose to the H's that distributions might cease at some future date.

APPLICABLE LAW

92. Pursuant to S.C. Code Ann. § 35-1-412(b), if the Securities Commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order under the Act may revoke, suspend, condition, or limit the registration of a registrant.

93. Pursuant to S.C. Code Ann. § 35-1-412(c), if the Securities Commissioner finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under the Act may censure, impose a bar, and/or impose a civil penalty in an amount not to exceed \$10,000 for each violation on a registrant.

94. Pursuant to S.C. Code Ann. § 35-1-412(d), a person may be disciplined under subsections (a) through (c) if the person: ...

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years... .

95. Pursuant to S.C. Code Ann. § 35-1-412(g), an order may not be issued under S.C. Code Ann. § 35-1-412, except under S.C. Code Ann. § 35-1-412(f), without (1) appropriate notice to

the applicant or registrant; (2) opportunity for hearing; and (3) findings of fact and conclusions of law in a record.

96. Pursuant to S.C. Code Ann. § 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- a. To employ a device, scheme, or artifice to defraud;
- b. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

97. Pursuant to S.C. Reg. 13-501(B), each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices which are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute include but are not limited to:

- (i) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known;
- (ii) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance;

- (iii) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;
- (iv) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint; and
- (v) Violating any rule of the Securities and Exchange Commission, or of a national securities exchange or national securities association or self-regulatory association of which the agent's broker-dealer is a member.

98. Pursuant to S.C. Reg. 13-501(C), the conduct set forth in Sections A and B of S.C. Reg. 13-501 is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices is also grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute.

99. Pursuant to Rule 113-25, a rule promulgated under the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. §§ 35-1-10 to 35-1-1590, each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices which are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by statute include but are not limited to:

- (i) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other

relevant information known;

(ii) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan,

program, design or contrivance;

(iii) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

(iv) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint; and

(v) Violating any rule of a national securities exchange or national securities association or self-regulatory association of which the agent's broker-dealer is a member.

100. Pursuant to Rule 113-25(C), a rule promulgated under the Prior Act, the conduct set forth in Sections A and B of Rule 113-25 is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices is also grounds for denial, suspension, or revocation of registration.

REQUESTED RELIEF

101. The Division requests that the Commissioner grant the following relief against Respondent:

- a. Pursuant to S.C. Code Ann. § 35-1-412(b), revoke Respondent's agent and investment adviser representative registrations;
- b. Pursuant to Section S.C. Code Ann. § 35-1-412(c), permanently bar Respondent from conducting securities business in or from the State of South Carolina;

- c. Pursuant to Sections S.C. Code Ann. § 35-1-412(c), order Respondent to pay an administrative fine in an amount not exceeding ten thousand and no/100 (\$10,000.00) dollars for each violation of the Act and each violation of any rule or order promulgated by the Commissioner; and
- d. Order any other relief that the Commissioner deems appropriate.

NOTICE AND OPPORTUNITY FOR A HEARING

NOTICE is hereby given that the Respondent shall have thirty (30) days from the date of receipt of this Notice of Intent to give written notice requesting a hearing on the matters contained herein to Thresechia Navarro, Securities Division, Post Office Box 11549, Columbia, South Carolina, 29211-1549. In the written Answer, Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Within fifteen (15) days of receipt of a written notice requesting a hearing, this matter will be scheduled for a hearing. Respondent may then appear, with or without the assistance of an attorney, at the hearing to present testimony, evidence, and argument relating to the matters contained herein. In the event such written notice requesting a hearing is not received within the above-stated thirty (30) day period of time, an order revoking Respondent's Agent and Investment Adviser Representative Registrations may be entered in this proceeding with no further notice.

By seeking to issue an order revoking Respondent's Agent and Investment Adviser Registration Representative Registrations, the Division is not waiving any rights it may have to

pursue additional remedies available to it for the above or other violations of the Act committed by the Respondent.

Executed and entered, this the 1st day of April, 2011.

SOUTH CAROLINA OFFICE OF THE
ATTORNEY GENERAL

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